

Tim Cunha

DEMOCRAT FOR CONGRESS

TIM CUNHA FOR CONGRESS
6th DISTRICT OF FLORIDA - ALACHUA, BRADFORD, CLAY,
DUVAL, GILCHRIST, LAKE, LEVY, & MARION COUNTIES

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17 November 2008

General Counsel's Office
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Attention: Jeff S. Jordan, Esq., Supervisory Attorney, Complaints Examination

Re: Your File: MUR 6116
Complaint of Sean Walsh, dated 24 October 2008

Dear Mr. Jordan:

On 7 November 2008, I received your two letters, one addressed to Tim Cunha For Congress Committee and the other to Timothy M. Cunha, both dated 3 November 2008, regarding a complaint by Sean Walsh, campaign manager for my opponent Clifford Stearns in the 6th district of Florida. I am responding as the candidate and as the treasurer of Tim Cunha For Congress within 15 days of receipt that correspondence.

I commissioned a reputable professional television broadcast and production company, Bright House Networks, to produce five television commercials, 30 seconds in length. I reasonably relied upon their professional expertise to produce commercials in compliance with applicable FCC and FEC regulations.

Mr. Walsh complains that these commercial spots violated CFR 110.11 Communications; advertising; disclaimers (2 USC441d), (c)(3)(ii)(B), asserting that said section "states that a photograph of the candidate that appears on the screen while the candidate approves the message, must be at least 80% of the vertical height of the screen." He then asserts: "Clearly, Mr. Cunha's ads do not meet the 80% requirement." Mr. Walsh lists the four cable companies that were carrying the commercials: Cox Media (Gainesville), Comcast Spotlight (Jacksonville), Brighthouse, and SAAP Cablevision (Ocala).

Mr. Walsh then requests two remedies of the FEC: "tasking [sic] the necessary action to [1] notify Mr. Cunha of this violation and [2] ensure that he removes the illegal ads at once."

Immediately upon learning of Mr. Walsh's complaint on or about 24 October 2008 by a phone conversation with Bright House and an email from Comcast Spotlight. I also had a phone conversation with Cox Media. I was advised that legal counsel for Bright House and Comcast Spotlight and either legal counsel or management at Cox Media had examined the commercials and the pertinent regulations and determined that my commercials were not in violation.

I also reviewed the Statute and the Regulation:

2 USC 441d(d)(1)(B)

By television. Any communication described in paragraph (1) or (2) of subsection (a) which is transmitted through television shall include, in addition to

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the requirements of that paragraph, a statement that identifies the candidate and states that the candidate has approved the communication. Such statement—

(i) shall be conveyed by—

(I) an unobscured, full-screen view of the candidate making the statement, or

(II) the candidate in voice-over, accompanied by a clearly identifiable photographic or similar image of the candidate; and

(ii) shall also appear in writing at the end of the communication in a clearly readable manner with a reasonable degree of color contrast between the background and the printed statement, for a period of at least 4 seconds

11 CFR §110.11

(c) Disclaimer specifications—

(1) Specifications for all disclaimers. A disclaimer required by paragraph (a) of this section must be presented in a clear and conspicuous manner, ~~to give the reader, observer, or listener adequate notice of the identity of the person or political committee that paid for and, where required, that authorized the communication.~~ A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if the placement is easily overlooked [*emphasis added*].

...
(3) Specific requirements for radio and television communications authorized by candidates.

...
(ii) A communication transmitted through television or through any broadcast, cable, or satellite transmission, must include a statement that identifies the candidate and states that he or she has approved the communication. The candidate shall convey the statement either:

(A) Through an unobscured, full-screen view of himself or herself making the statement, or

(B) Through a voice-over by himself or herself, accompanied by a clearly identifiable photographic or similar image of the candidate. A photographic or similar image of the candidate shall be considered clearly identified if it is at least eighty (80) percent of the vertical screen height [*emphasis added*].

Since I appeared speaking "live" on 100% of the screen for well over the prescribed 4 seconds immediately preceding the printed and verbal disclaimer, it was the opinion of these broadcast professionals (and, I was informed, of their respective legal counsels) that my image adequately accompanied the disclaimer to fulfill the requirements of the statute and regulations.

Furthermore, an examination of the commercials as originally produced will demonstrate that any reasonable viewer had received "... adequate notice of the identity of the person or political committee that paid for and ... authorized the communication," as required by the statute.

Nevertheless, I wished to demonstrate good faith and avoid even the appearance of impropriety. Consequently, on 24 November 2008, I requested Bright House Network, the company that produced all five commercials, to revise the commercials and increase the size of my image simultaneously accompanying the written and verbal disclaimer text to 80% of the screen height. This they accomplished on the next business day, 27 November 2008, and at my direction sent the

new commercials by overnight delivery to Cox Media (Gainesville), Comcast Spotlight (Jacksonville), Bright House, and SAAP Cablevision (Ocala) to replace the earlier commercials. These five new replacement commercials may be viewed at www.TimCunha.com/newTVads.

Mr. Walsh asked for two remedies as set forth above.

Mr. Walsh did not notify me of his complaint or objection, but rather asked that the FEC do so: that has been accomplished.

Mr. Walsh asked that I be ordered to remove the commercials:

this request is now moot; however, the commercials to which he objected were removed and replaced with commercials about which there can be no ambiguity.

In summary:

I commissioned a professional television corporation, experienced in producing political campaign television ads, and I reasonably relied upon them to produce commercials in compliance with all applicable regulations, with which it must be assumed they are far more familiar than I.

In good faith, we aired television commercials which left no doubt whatsoever to any viewer as to the identity of exactly who authorized the ads, what he looked like, and who paid for the ads.

When a complaint was brought to my attention by the broadcasters (not having been advised by the complainant of his objections), I listened to the advice and counsel of the professional television producers and broadcasters assuring me that they saw no violation. Nevertheless, to avoid even the appearance of impropriety, I took immediate measures to revise the ads to leave no ambiguity as to their compliance.

There was no malice, no intentional negligence, and no material harm. If there was a violation, it was certainly *de minimis*.

The complainant has *de facto* already received the remedies requested.

I submit that all these factors demonstrate that no action should be taken against my campaign committee or me. If the Commission determines it appropriate, I would certainly consider entering into conciliation regarding this matter.

Respectfully submitted,


Timothy M. Cunha

Sworn to & subscribed before me this 19th day of November, 2008.

ROBERTA MIRO
NOTARY PUBLIC - STATE OF FLORIDA
COMMISSION # 00726222
EXPIRES 10/18/2011
BONDED THRU 1-888-NOTARY1

By: Roberta Miro
Notary Public, State of Florida